

ESTTA Tracking number: **ESTTA580253**Filing date: **01/06/2014**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Petition for Cancellation

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

Name	Gaia Herbs, Inc.		
Entity	Corporation	Citizenship	Delaware
Address	101 Gaia Herbs Dr. Brevard, NC 28712 UNITED STATES		

Attorney information	Richard T. Matthews Myers Bigel Sibley & Sajovec, P.A. 4140 Parklake Avenue, Ste. 600 Raleigh, NC 27612 UNITED STATES instructions@myersbigel.com, rmatthews@myersbigel.com Phone:(919) 854-1400
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Registration Subject to Cancellation

Registration No	3398673	Registration date	03/18/2008
International Registration No.	NONE	International Registration Date	NONE
Registrant	BioGaia AB Box 3242 SEX SEX		

Goods/Services Subject to Cancellation


Class 005. First Use: 0 First Use In Commerce: 0 All goods and services in the class are cancelled, namely: Pharmaceutical preparations for use in treating gastric disease and disturbances, baby food; media bacteriological cultures, bacteria and preparations of bacteria in the nature of probiotics for medical use and healthcare; medical dental care preparations, namely, chewing gum, lozenges, pastilles and mouthwash for medical purposes; all of the foregoing excluding liquid herbal extracts, liquid herbal extracts in vegetable-based capsules, and solid herbal extracts
Class 029. First Use: 0 First Use In Commerce: 0 All goods and services in the class are cancelled, namely: Milk, milk based drinks, namely, drinking yoghurt, milk products, namely, eating yoghurt and dairy products containing lactic acid bacteria, excluding ice cream, ice milk, and frozen yoghurt


Grounds for Cancellation

False suggestion of a connection	Trademark Act section 2(a)
The registration is being used by, or with the permission of, the registrant so as to misrepresent the source of the goods or services	Trademark Act section 14


on or in connection with which the mark is used.	
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Marks Cited by Petitioner as Basis for Cancellation

U.S. Registration No.	2410679	Application Date	01/03/2000
Registration Date	12/05/2000	Foreign Priority Date	NONE
Word Mark	GAIA		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 1986/05/01 First Use In Commerce: 1986/05/01 Dietary supplements, namely, liquid herbal extracts, liquid herbal extracts in vegetable- based capsules, and solid herbal extracts		


U.S. Registration No.	2397913	Application Date	11/22/1999
Registration Date	10/24/2000	Foreign Priority Date	NONE
Word Mark	GAIA HERBS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 1987/00/00 First Use In Commerce: 1987/00/00 DIETARY SUPPLEMENTS, NAMELY, LIQUID HERBAL EXTRACTS, LIQUID HERBAL EXTRACTS IN VEGETABLE-BASED CAPSULES, AND SOLID HERBAL EXTRACTS		


U.S. Registration No.	3838994	Application Date	06/22/2009
Registration Date	08/24/2010	Foreign Priority Date	NONE
Word Mark	GAIA ORGANICS		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 005. First use: First Use: 2010/03/09 First Use In Commerce: 2010/04/19 Organic herbal, nutritional and dietary supplements

U.S. Registration No.	3930562	Application Date	03/05/2010
Registration Date	03/15/2011	Foreign Priority Date	NONE
Word Mark	GAIA HERBS		
Design Mark			
Description of Mark	The mark consists of "gaia herbs" with a script "g".		
Goods/Services	Class 005. First use: First Use: 2010/02/15 First Use In Commerce: 2010/02/15 dietary supplements, namely, liquid herbal extracts, liquid herbal extracts in vegetable-based capsules, and solid herbal extracts		

U.S. Registration No.	3985225	Application Date	11/03/2010
Registration Date	06/28/2011	Foreign Priority Date	NONE
Word Mark	GAIKIDS		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 005. First use: First Use: 2010/10/22 First Use In Commerce: 2010/10/22 dietary supplements, namely, liquid herbal extracts, liquid herbal extracts in vegetable-based capsules, and solid herbal extracts for consumption by children

U.S. Registration No.	4308263	Application Date	07/05/2012
Registration Date	03/26/2013	Foreign Priority Date	NONE
Word Mark	GAIA HERBS PROFESSIONAL SOLUTIONS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 2001/08/30 First Use In Commerce: 2001/08/30 herbal nutritional supplements		

U.S. Application No.	85861267	Application Date	02/27/2013
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	GAIA HERBS		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 003. First use: First Use: 1995/12/31 First Use In Commerce: 1995/12/31 Herb-based cosmetic preparations, namely skin and body lotions, creams and oils

U.S. Application No.	86028951	Application Date	08/05/2013
Registration Date	NONE	Foreign Priority Date	NONE

Word Mark	GAIA
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Design Mark	
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Description of Mark	NONE
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Goods/Services	<p>Class 003. First use: First Use: 2011/06/24 First Use In Commerce: 2011/06/24 Herb-based breath freshener; Herb-based cosmetic preparations, namely, oil or wax body care products, namely, lotions, salves, and balms</p> <p>Class 005. First use: First Use: 2013/04/01 First Use In Commerce: 2013/04/01 Organic or herb-based energy and antioxidant aids in the form of dietary supplements; Organic or herb-based cough syrup; Organic or herb-based digestive aids in the form of dietary supplements; Organic or herb-based ear drops; Organic or herb-based diuretics; Botanical derived iron in the form of a liquid dietary supplement</p> <p>Class 030. First use: First Use: 2011/05/20 First Use In Commerce: 2011/05/20 Herbal tea</p> <p>Class 032. First use: First Use: 2013/04/01 First Use In Commerce: 2013/04/01 Organic or herb-based energy aids in the form of non-alcoholic energy shots</p>
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U.S. Application No.	86030402	Application Date	08/06/2013
Registration Date	NONE	Foreign Priority	NONE

		Date	
Word Mark	GAIA HERBS		
Design Mark			
Description of Mark	The mark consists of lower case letters "g", "a", "i" and "a" and upper case letters "H", "E", "R", "B" and "S". With "gaia" appearing on top and "HERBS" appearing underneath.		
Goods/Services	<p>Class 003. First use: First Use: 2011/06/24 First Use In Commerce: 2011/06/24 Herb-based breath freshener; Herb-based cosmetic preparations, namely, oil or wax body care products, namely, lotions, salves, and balms</p> <p>Class 005. First use: First Use: 2013/04/01 First Use In Commerce: 2013/04/01 Organic or herb-based energy and antioxidant aids in the form of dietary supplements; Organic or herb-based cough syrup; Organic or herb-based digestive aids in the form of dietary supplements; Organic or herb-based ear drops; Organic or herb-based diuretics; Botanical derived iron in the form of a liquid dietary supplement</p> <p>Class 030. First use: First Use: 2011/05/20 First Use In Commerce: 2011/05/20 Herbal tea</p> <p>Class 032. First use: First Use: 2013/04/01 First Use In Commerce: 2013/04/01 Organic or herb-based energy aids in the form of non-alcoholic energy shots</p>		

U.S. Application No.	86115910	Application Date	11/11/2013
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	GAIA		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 003. First use: First Use: 1995/12/31 First Use In Commerce: 1995/12/31 Herb or organic based supplements and cosmetic preparations, namely skin and body lotions, creams, oils and dietary supplements		

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	GAIA		
Goods/Services	At least 32 supplements directed to Digestive Function under its GAIA Marks including, but not limited to, #GaiaKids® Tummy Tonic Herbal Drops# to support healthy digestion, #Sweetish Bitters Elixir# to support digestion, #Para-shield# for optimizing digestive flora, #Gas & Bloating# for promoting the absorption and elimination of gas and improving digestive function, and #Herbal Digest Tea# for digestive distress. See Exhibit A for a listing on Gaia Herbs# website of the 32 products mentioned herein.		

Attachments	75884801#TMSN.gif(bytes) 75854568#TMSN.gif(bytes) 77764746#TMSN.jpeg(bytes) 77951386#TMSN.jpeg(bytes) 85167754#TMSN.jpeg(bytes) 85669070#TMSN.jpeg(bytes) 85861267#TMSN.jpeg(bytes) 86028951#TMSN.jpeg(bytes) 86030402#TMSN.jpeg(bytes) 86115910#TMSN.jpeg(bytes) Petition to Cancel re BioGaia.pdf(68319 bytes) Exhibit A.pdf(4046246 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/rtm/
Name	Richard T. Matthews
Date	01/06/2014

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

GAIA HERBS, INC.,

Petitioner,

v.

BIOGAIA AB, LLC,

Respondent.

Cancellation No. _____
Registration No. 3,398,673

Honorable Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451


PETITION FOR CANCELLATION

Petitioner Gaia Herbs, Inc. (“Gaia Herbs” or “Petitioner”), a corporation organized under the laws of the State of Delaware, having a principal place of business at 101 Gaia Herbs Dr., Brevard, North Carolina 28712, believes it is or will be damaged by the continued registration of the mark identified above (“BIOGAIA”) and hereby petitions to cancel the registration.

As grounds for this Petition, Petitioner Gaia Herbs alleges:

1. Gaia Herbs is a leading grower and producer of Certified Organic and/or herbal remedies, supplements, and nutraceuticals, including preparations for digestive and gastric ailments and disturbances since at least as early as 1993.
2. As set forth below, Gaia Herbs is the owner of several United States federal trademark registrations for the following marks:

<u>Mark</u>	<u>Trademark Serial No.</u>	<u>Goods/Services</u>
GAIA	75/884,801	Dietary supplements, namely, liquid herbal extracts, liquid herbal extracts in vegetable-based capsules, and solid herbal extracts.
GAIA HERBS	75/854,568	Dietary supplements, namely, liquid herbal extracts, liquid

		herbal extracts in vegetable-based capsules, and solid herbal extracts.
GAIA ORGANICS	77/764,746	Organic herbal, nutritional and dietary supplements.
	77/951,386	Dietary supplements, namely, liquid herbal extracts, liquid herbal extracts in vegetable-based capsules, and solid herbal extracts.
GAI AKIDS	85/167,754	Dietary supplements, namely, liquid herbal extracts, liquid herbal extracts in vegetable-based capsules, and solid herbal extracts for consumption by children.
GAIA HERBS PROFESSIONAL SOLUTIONS	85/669,070	Herbal nutritional supplements
GAIA HERBS	85/861,267	Herb-based cosmetic preparations, namely skin and body lotions, creams and oils.
GAIA	86/028,951	Herb-based breath freshener; Herb-based cosmetic preparations, namely skin and body lotions, creams and oils; Organic or herb-based energy and antioxidant aid; Organic or herb-based cough syrup; Organic or herb-based digestive aid; Herbal tea; Organic or herb-based ear drops; Organic or herb-based diuretic; Botanical derived iron in liquid form; Herbal tea; Organic or herb-based energy aids in the form of non-alcoholic energy shots.
	86/030,402	Herb-based breath freshener; Herb-based cosmetic preparations, namely skin and body lotions, creams and oils; Organic or herb-based energy and antioxidant aid; Organic or herb-based cough syrup;

		Organic or herb-based digestive aid; Herbal tea; Organic or herb-based ear drops; Organic or herb-based diuretic; Botanical derived iron in liquid form; Herbal tea; Organic or herb-based energy aids in the form of non-alcoholic energy shots.
GAIA	86/115,910	Herb or organic based supplements and cosmetic preparations, namely skin and body lotions, creams, oils and dietary supplements.

3. All of the aforementioned trademarks (hereinafter, “GAIA Marks”) are valid and subsisting registrations or *bona fide* pending federal applications; and Serial Nos. 75/884,801 and 75/854,568 are incontestable registrations under Section 15 of the Lanham Act.

4. Gaia Herbs has been continuously selling goods under one or more of its GAIA Marks since at least as early as 1986, and has extensive sales throughout the United States since that time. Gaia Herbs has spent substantial sums in advertising its products branded with the GAIA Marks. Currently, Gaia Herbs offers over 200 products under its GAIA Marks throughout the United States and around the world.

5. More specifically, Gaia Herbs offers at least 32 supplements directed to Digestive Function under its GAIA Marks including, but not limited to, “GaiaKids® Tummy Tonic Herbal Drops” to support healthy digestion, “Sweetish Bitters Elixir” to support digestion, “Para-shield” for optimizing digestive flora, “Gas & Bloating” for promoting the absorption and elimination of gas and improving digestive function, and “Herbal Digest Tea” for digestive distress. *See* Exhibit A for a listing on Gaia Herbs’ website of the 32 products mentioned herein.

6. As a result of extensive sales and substantial advertising by Gaia Herbs under its GAIA Marks, and the significant efforts made by Gaia Herbs to maintain a premium quality of

standards related thereto, the GAIA Marks have become well and favorably known to the American public as the distinctive indication of origin for Gaia Herbs' Certified Organic and all-natural products. In addition, Gaia Herbs has extensive common law rights in the Gaia Marks for a wide range of herbal remedies, nutraceuticals, and supplements that long pre-date Respondent's priority date.

7. Upon information and belief, Respondent BioGaia AB, LLC is a Swedish limited liability company with an address of Box 3242 SE-103 64 Stockholm Sweden.

8. Upon information and belief, Respondent has a priority date of July 4, 2006 for its "BioGaia" Trademark Registration No. 3,398,673.

9. Gaia Herbs recently became aware of Respondent's sales of products in the United States bearing the "BioGaia" mark as identified in the picture below as a 'PROBIOTIC SUPPLEMENT.'



10. Gaia Herbs neither authorized Respondent' use of its GAIA Marks nor any marks that are confusingly similar thereto, including the use of the confusingly similar "BioGaia" mark in connection with Respondent' products. Moreover, the use by Respondent represents a false

suggestion of a connection under the Trademark Act section 2(a) and/or is being used to misrepresent the source of the goods or services on or in connection with which the mark is used under Trademark Act section 14.

11. Respondent has violated, and continue to willfully and intentionally violate, Gaia Herbs' trademark rights by trading on the valuable goodwill and reputation established therein by at least deceiving the public and the trade into believing that its products are in fact sourced from Gaia Herbs, or are in some way sponsored by or associated with Gaia Herbs.

12. Respondent's use of "BioGaia" is likely to cause confusion, or cause mistake, or deceive the public as to the affiliation, connection, or association of it with Gaia Herbs, or as to the origin, sponsorship, or approval of Respondent's goods by Gaia Herbs.

WHEREFORE, Petitioner requests that this Petition for Cancellation be granted and that Registration No. 3,398,673 be cancelled.

Petitioner Gaia Herbs has appointed RICHARD T. MATTHEWS of the law firm of MYERS BIGEL SIBLEY & SAJOVEC, P.A., a member of the bar of the Commonwealth of Virginia, District of Columbia, and State of North Carolina, to prosecute this cancellation proceeding and to transact all business in and before the United States Patent and Trademark Office in connection herewith. Please address all correspondence to:

RICHARD T. MATTHEWS
MYERS BIGEL SIBLEY & SAJOVEC, P.A.
4140 PARKLAKE AVENUE, STE. 600
RALEIGH, NC 27612

We enclose our Deposit Account No. 500220 for the required filing fee for this Petition. The Commissioner is hereby authorized to charge any additional fees which may be required to the same Deposit Account.

Respectfully submitted,

s/ Richard T. Matthews
Richard T. Matthews, Esquire
N.C. Bar No. 32817
Myers Bigel Sibley & Sajovec, P.A.
4140 Parklake Avenue, Ste. 600
Raleigh, NC 27612
(919) 854-1400 - Phone
(919) 854-1401 – Fax
rmatthews@myersbigel.com
instructions@myersbigel.com

Attorneys for the Petitioner

Dated: January 6, 2013

EXHIBIT A



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Products for: Digestive Function

32 Products

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Black Walnut Fresh Green Hulls Juglans nigra

Buy

- Supports the Natural Balance of Healthy Intestinal Flora within the GI Tract
- Supports Healthy Intestinal Environment

Herbs: [Black Walnut](#)



Burdock Root, Certified Organic 500 mg/ml herb equivalency

Buy

- Supports Healthy and Vital Skin with a Clear Complexion*
- Promotes Normal Liver Function by Supporting the Detoxification Process in the Body *
- Supports the natural Flow of Lymphatics*

Herbs: [Burdock root](#)



Cinnamon Bark, Certified Organic 333 mg/ml herb equivalency

Buy

- Supports Digestion and the Occasional Feeling of Fullness within the Stomach*
- Warming Digestive Aid*
- Support for Normal Blood Sugar Metabolism*

Herbs: [Cinnamon Bark](#)



Cleanse & Detox Tea Naturally supports the detoxification process*

Buy

Cleanse & Detox Herbal Tea supports healthy liver function that is essential to maintaining wellness.* This unique formulation is characterized by the presence of herbs with well-known purifying action such as Burdock and Artichoke, combined with the antioxidant properties of Rooibos (African Red Tea).* The gentle herb blend is complemented by essential oils of Lemon and Peppermint, giving a pleasant taste to this tea.

Herbs: [Aloe](#), [Artichoke](#), [Burdock](#), [Fennel](#), [Lemon Essential Oil](#), [Licorice Root](#), [Peppermint Leaf Essential Oil](#), [Star Anise](#)



Daily Cleanse Fiber Supports healthy & gentle elimination*

Buy

Daily Cleanse Fiber is a proprietary blend of plant based fibers and herbs to help support healthy digestion and elimination.* Used daily, this blend gently supports regularity with fiber and Triphala, while herbs like Ginger and Cinnamon pleasantly warm and stimulate digestion.*

Herbs: [Chia](#), [Cinnamon Bark Powder](#), [Ginger Root](#), [Licorice](#), [Marshmallow Root](#), [Psyllium Husk Powder](#), [Triphala](#)

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**Gas & Bloating**

Fast-acting formula to reduce gas & bloating*

Buy

Gas & Bloating™ works quickly to reduce gas, bloating and feeling of heaviness that can occur after meals.* Natural vegetable charcoal and Fennel seed promote the absorption and elimination of gas, while a unique blend of herbs and essential oils improve digestive function and provide natural relief to the intestine.*

Herbs: **Caraway** , **Chamomile** , **Cumin** , **Fennel** , **Lemon Balm Leaf** , **Marojam Leaf Essential Oil** , **Peppermint Leaf Essential Oil** , **Star Anise**

**Gas & Bloating Tea**

Fast acting relief for digestive discomfort*

Buy

It is a common occurrence to eat too quickly or eat foods that your body may not agree with. This may result in a feeling of fullness accompanied by digestive gas and bloating. This unique tea formulation combines herbs such as Peppermint, Caraway and Licorice Root with Fennel seed essential oil to sooth your digestive system and provide fast acting relief for occasional indigestion.*

Herbs: **Caraway** , **Chamomile** , **Fennel** , **Fennel Seed Essential Oil** , **Licorice Root** , **Peppermint Leaf** , **Star Anise**

**Ginger Root, Certified Organic**
500 mg/ml herb equivalency

Buy

- Support for Occasional Nausea*
- Supports A Healthy Inflammatory Response in the Body*

Herbs: **Ginger Root****Ginger Supreme**

Supports a healthy inflammatory response*

Buy

Ginger has a long history of use for promoting healthy digestion, modulating inflammation, supporting heart health, and alleviating nausea. Ginger Supreme uses dual extraction technology to deliver the broadest spectrum of herbal activity: 1. Supercritical CO2 extraction, for fat-soluble constituents; and 2. Alcohol extraction, for water-soluble constituents.

Herbs: **Ginger Rhizome** , **Tumeric Root Supercritical Extract****Goldenseal Root**

222 mg/ml herb equivalency

Buy

Herbs: **Goldenseal**

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Alfalfa

Aloe

American Ginseng

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Lemon Balm, Certified Organic

333 mg/ml herb equivalency

Buy

- Provides a Sense of Balance for the Nervous System *
- Immune System Support *
- Provides Comfort for Occasional Digestive Distress *

Herbs: [Lemon Balm](#)



Marshmallow Root, Certified Organic

333 mg/ml herb equivalency

Buy

- Soothing Support for Mucous Membranes *
- Natural Mucilage From Marshmallow Root Moistens and Cools Occasional Irritation *

Herbs: [Marshmallow Root](#)



Milk Thistle Seed

Supports healthy liver function*

Buy

Multiple studies suggest that Milk Thistle Seed supports healthy liver function.* Gaia Herbs concentrates its Milk Thistle Seed extract under low temperature and low pressure to preserve the important phytochemical Silymarin. This constituent promotes healthy liver cell production and cholesterol metabolism in individuals with already normal cholesterol levels.*

Herbs: [Milk Thistle Seed](#)



Milk Thistle Seed, Certified Organic

1000 mg/ml herb equivalency

Buy

- A Natural Source of Plant Antioxidants*
- Ultimate Support for Healthy Liver Function*
- Supports the Elimination of Waste Products and the Detoxification Process*

Herbs: [Milk Thistle](#)



Milk Thistle Seed, Low alcohol

1000 mg/ml herb equivalency

Buy

- A Natural Source of Plant Antioxidants*
- Ultimate Support for Healthy Liver Function*
- Supports the Elimination of Waste Products and the Detoxification Process
- Great Tasting Low-Alcohol Formula

Herbs: [Milk Thistle](#)

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Oregano Leaf, Certified Organic
333 mg/ml herb equivalency

- Supports Healthy Immune System Functions*
- Supports the GI Tract and Promotes Healthy Intestinal Flora*
- Maintains a Healthy Inflammatory Response to Seasonal Stressors*


Herbs: **Oregano**



Peppermint Leaf, Certified Organic
333 mg/ml herb equivalency

- Promotes Healthy Functions of the Digestive System*
- Support For Occasional Gas and Bloating After Meals*


Herbs: **Peppermint**



Reflux Relief
For occasional upset stomach, heartburn & acid indigestion*

Reflux Relief® combines botanicals with mineral nutrients to provide relief for occasional heartburn and acid indigestion, while promoting healthy stomach function.* Natural sources of sodium bicarbonate and calcium carbonate work as neutralizers to maintain stomach acid balance.* Organic extracts of soothing plants such as Aloe, Marshmallow, Barley, Licorice, and Chamomile promote healthy gastric function.*


Herbs: **Aloe , Barley , Chamomile , Licorice Root , Marshmallow Root , Spearmint Natural Flavor , Sugar Cane**



Schisandra Berry
500 mg/ml herb equivalency

- Supports Healthy Functions of the Liver
- Encourages Healthy Digestions and GI Functions
- Five Flavored Herb and Naturally Balances Endocrine Functions

Herbs: **Schisandra**



Supreme Cleanse
Whole body herbal detox program to support gentle internal cleansing*

Today's environment exposes our bodies to a variety of toxins and pollutants. Gaia Herbs' Supreme Cleanse is designed to support gentle detoxification and assist with elimination.* This safe and effective cleanse supports the natural role of the liver, a healthy lymphatic system, digestion, and elimination.*

Herbs: **Artichoke , Black Radish , Burdock Root , Chia , Cinnamon Bark Powder , Corydalis , Dandelion Leaf , Fenugreek , Figwort , Gentian , Ginger Rhizome , Licorice , Marshmallow Root , Milk Thistle , Psyllium Husk Powder , Red Root , Rooibos , Triphala ,**

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Alfalfa

Aloe

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Healthcare Practitioners

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